

United States District Court
District of Massachusetts

_____)	
United States of America)	
)	
v.)	Criminal Action No.
)	11-10062-NMG
Russell Rose,)	
)	
Defendant.)	
_____)	

MEMORANDUM & ORDER

GORTON, J.

Pending before the Court is the motion of defendant Russell Rose ("defendant" or "Rose") to reinstate his petition for compassionate release and for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A). In his third request for compassionate release within the past year, Rose contends that recent changes in the applicable law and his personal circumstances support his petition.

First, there has been no change in the law applicable to his motion since Rose last moved for compassionate release. The cases he cites indicate that courts in some circuits have held that sentencing courts are not limited by U.S.S.G. § 1B1.13 in determining whether a defendant has established "extraordinary and compelling reasons" in

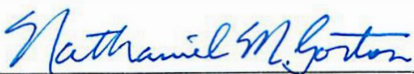
support of release. The prior orders of this Court denying Rose compassionate release did not rely on a more restrictive view of U.S.S.G. § 1B1.13 so those cases are inapplicable.

Second, recent changes in Rose's personal circumstances do not support his release and, in fact, tend to buttress the government's opposition to his motion. Rose claims that FMC Devens is experiencing a "serious outbreak" of COVID-19 but, as of February 19, 2021, the Bureau of Prisons reports that only seven inmates and nine staff have confirmed active cases in that facility. Furthermore, Rose's medical records reveal that he was diagnosed with COVID-19 in January, 2021, and has since recovered.

In any event, Rose's release would be inconsistent with the factors in 18 U.S.C. § 3553(a) for the reasons set forth in previous orders denying his requests for release.

Accordingly, defendant's motion to reinstate his petition for compassionate release and for a reduction of his sentence (Docket No. 1398) is **DENIED**.

So ordered.



Nathaniel M. Gorton
United States District Judge

Dated February 22, 2021